

Report on the

**DEPARTMENT OF PUBLIC HEALTH
RADIATION CONTROL AGENCY**

Montgomery, Alabama



**Department of
Examiners of Public Accounts**

**50 North Ripley Street, Room 3201
P.O. Box 302251
Montgomery, Alabama 36130-2251**

Ronald L. Jones, Chief Examiner

State of Alabama
Department of
Examiners of Public Accounts

Telephone (334) 242-9200
FAX (334) 242-1775

Ronald L. Jones
Chief Examiner

Mailing Address:
P.O. Box 302251
Montgomery, AL 36130-2251

Location:
Gordon Persons Building
50 North Ripley Street, Room 3201
Montgomery, AL 36104-3833

July 27, 2005

Senator Larry Dixon
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Senator Dixon:

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the State Radiation Control Agency and the Radiation Advisory Board of Health in accordance with the ***Code of Alabama 1975***, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the State Radiation Control Agency and the Radiation Advisory Board of Health, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Ronald L. Jones
Chief Examiner

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PROFILE

State Radiation Control Agency

Purpose/Authority:

Act No. 582, *Acts of Alabama 1963* designates the State Board of Health as the State Radiation Control Agency, and the State Health Officer is designated the Director of the Agency. The purpose of the State Radiation Control Agency is to maintain a regulatory program for sources of ionizing radiation compatible with standards and regulatory programs of the federal government and other states. To accomplish this purpose, the State Board of Health created the Office of Radiation Control as a division within the Department of Public Health. The State Health Officer appoints a Director for the Office. The office licenses sources and users of radioactive materials, registers devices producing radiation (i.e. x-ray machines), inspects radioactive materials and radiation-producing equipment, conducts radiological environmental monitoring and radon gas research, and oversees and implements the state's emergency response plan for radiological disasters. The *Code of Alabama 1975*, Sections 22-14-1 through 22-14-35 govern the activities the State Radiation Control Agency.

Through an agreement with the U.S. Nuclear Regulatory Commission (NRC), the Office of Radiation Control performs all inspections and regulation of NRC licensees, except on federal installations and within the perimeter of nuclear power plants. State law requires the office to regulate additional forms of ionizing radiation in Alabama, such as naturally occurring radioactive material (NORM), or ionizing radiation produced by machines (x-rays, mammograms, cat scans, or particle accelerators), which are not regulated by the NRC.

Alabama is a member of the Southeast Interstate Low-Level Radioactive Waste Management Compact as set forth in the *Code of Alabama 1975*, Sections 22-32-1 through 22-32-9. The director of the Office of Radiation Control serves as a member of the Southeast Interstate Low-Level Radioactive Waste Management Commission.

Operations:

1. Administrator: Kirksey E. Whatley
Annual Salary \$81,998.80
Merit system position appointed by the State Health Officer.
2. Location: 201 Monroe Street, Suite 700
Montgomery, AL 36130-3017
3. Licensees: At 01/01/05:
General Licenses: 540
Specific Licenses: 436
X-Ray Facilities - 3,290 (9,628 x-ray tubes)
Particle Accelerators: 50

4. Renewals:
- General Licenses (low hazard) - No renewal necessary, license valid until terminated by the licensee or the agency.
- Specific Licenses (greater hazard than general) – Renewal application to be submitted 30 days prior to expiration. When application is received, old license remains valid until the new license is issued.
- X-Ray Producing Equipment and Particle Accelerators – Renewal application to be submitted 30 days prior to expiration. When application is received, old license remains valid until the new license is issued.
6. Examinations: None
7. Continuing Education: No statutory requirement
8. Reciprocity: A 30-day per year general license is issued to any person who holds a specific license from the Nuclear Regulatory Commission or any agreement state.
9. Employees: 18 Classified Merit System Employees
10. Legal Counsel: 1 Staff Attorney - John Wible (Department of Public Health)
jwible@adph.state.al.us
11. Internet Presence No specific Internet presence

Financial Information:

1. Source of Funds: Fees for specific licenses set by statute at 75% of the amount charged by the Federal Nuclear Regulatory Commission for specific licenses. The agency has no authority to collect other fees.
2. State Treasury: Yes.
3. Unused Funds: All unencumbered excess funds in Fund 313 (the Radiation Safety Fund) at 9/30 over \$100,000.00 are transferred to the General Fund.

Radiation Advisory Board of Health

Purpose/Authority

The Radiation Advisory Board of Health was created by Act 582, *Acts of Alabama 1963*. Its purpose is to review and evaluate policies and programs of the state relating to ionizing radiation, and to advise the Radiation Control Agency of its findings and opinions on the policies and programs or any other matter submitted to the board concerning ionizing radiation. The Office of Radiation Control of the Department of Public Health performs all staff and administrative functions for the board.

Board Characteristics

1. Members: 10 appointees – State Health Officer serves as chairman
2. Terms: 6-year, staggered terms.
3. Selection: Six (6) members appointed by the Governor from a list of three nominees submitted by:
 - The Business Council of Alabama,
 - The President of the University of Alabama,
 - The President of Auburn University,
 - The President of the Alabama Dental Association
 - The Board of Chiropractic Examiners,
 - The Alabama Veterinary Medical Association.

Four (4) members appointed by the Governor from a list of three nominees from the State Committee of Public Health in the fields of:

 - Radiology
 - Medicine
 - Radiation or Health Physics
 - Applied Sciences
4. Qualifications: Members appointed by Presidents of the University of Alabama and Auburn University must have knowledge in the field of radiation.
5. Minority Race Representation: No statutory requirement
No minority race representation
6. Consumer Representative: No statutory requirement

- | | |
|-------------------------------|---|
| 7. Geographic Representation: | No statutory requirement |
| 8. Compensation | Members receive no salary but are reimbursed at state employee rates for expenses incurred in connection with attendance at board meetings or authorized business of the board. |

SIGNIFICANT ITEMS

1. No meetings by the Radiation Advisory Board of Health

The Radiation Advisory Board of Health was created by Acts of Alabama 1963. Its purpose is to evaluate policies and programs of the state relating to ionizing radiation, and to advise the Radiation Control Agency its findings and opinions on policies or any other matter submitted to the board concerning ionizing radiation. The Radiation Advisory Board has not met since the last review of the agency by the Sunset Committee. There is no statutory requirement for frequency of meetings. Meetings are held at the request of the State Health Officer.

A letter received from the director of the Department of Public Health, Office of Radiation Control states that,

“The Radiation Advisory Board of Health has not had a formal meeting since, at least, 1992. Traditionally this Board has served in an advisory capacity to the State Health Officer and the Staff of the Office of Radiation Control. As a general rule, representatives of the different disciplines on the Board may be contacted with staff questions related to the Board member's area of expertise. For instance, if there was a question regarding procedures or technique for calibration of a particle accelerator, either the radiologist or the health physics representative might be contacted for assistance. The veterinarian would not be contacted in this case.”

“In the State of Alabama there have been no controversial issues involving ionizing radiation for many years. Uses of both x-ray and radioactive materials are rather routine with no unusual requests for use having been received by staff. Members of the Board (not all) occasionally contact us with questions and seeking assistance with various concerns of the individual Board member.”

“Should staff have need of assistance from any Board member, for instance with a concern related to chiropractic radiology, the member of the Board representing that discipline would be contacted.”

“This procedure has seemed to work well with the Staff of the Office of Radiation Control as well as the Board members who volunteer their time in service to this agency.”

STATUS OF PRIOR SIGNIFICANT ITEMS

2. Limited Revenue Source Supports Majority of Activities

The *Code of Alabama 1975*, Section 22-32-5 authorizes the Office of Radiation Control to collect licensing, application, and inspection fees equal to 75% of the fees charged by the U. S. Nuclear Regulatory Commission (NRC). Because the NRC does not collect fees for licensing, registering, inspecting and otherwise regulating all forms of ionizing radiation, the Office cannot collect a fee for the work performed on its highest volume of ionizing radiation registrants. Of the 4,583 total licensees/registrants at 7/31/01, only 367 pay licensing and inspection fees. Prior to the inception of the State Radiation Control Agency, Jefferson County implemented a program to register, regulate and inspect machine-produced sources of ionizing radiation. In Jefferson County, doctors, dentists, chiropractors, podiatrists, veterinarians, hospitals, clinics, educators, and industries pay fees for registering and inspecting equipment that produces ionizing radiation. Similar practitioners outside of Jefferson County do not pay such fees. A copy of the Jefferson County fee schedule that includes fees for radiological health monitoring appears as Appendix 3. Of the 1,002 inspections performed by the Division of Radiation Control in FY 2000, 811 inspections were performed on x-ray facilities. In conjunction with the 811 facility inspections accomplished, there were 1,641 inspections of X-ray equipment, and 1,771 inspections of X-ray tubes.

Current Status – This condition remains unchanged. We obtained a copy of a bill that was prepared for the 2002 legislative session to remedy this condition; however, we were unable to confirm that the bill was actually submitted to the legislature.

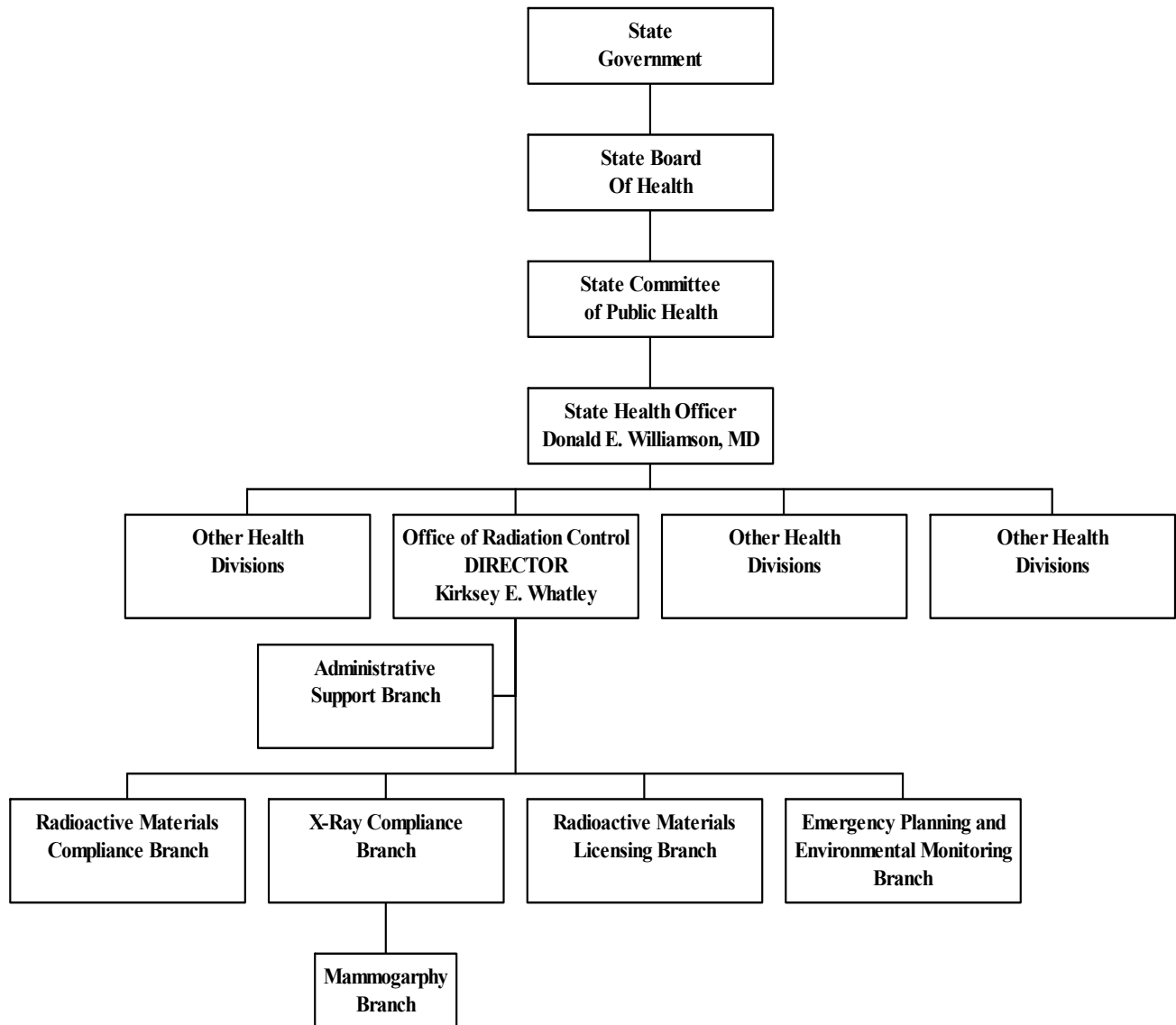
3. Insufficient Appointments to Radiation Advisory Board of Health:

The board is required by law to be composed of 10 members appointed by the Governor. In addition, the State Health Officer serves as the ex officio chairman. Currently, the board is composed of five appointed members and the ex officio chairman. Five members are serving past their expired terms, and new members have not been appointed.

Current Status – Of the ten (10) members appointed by the Governor, only two (2) are serving within their appointed terms of office. Four (4) are serving beyond terms that expired in 2002. Three (3) are serving beyond terms that expired in 1998, 2000, and 2004. One (1) position may have no member serving- the member designated to represent the Business Council of Alabama. According to the director of the Office of Radiation Control, nominations have been submitted for six of the eight positions in which members

are serving beyond their appointed terms. He was not aware of anyone serving in the Business Council position; although, the Business Council nominated three persons to the Governor for consideration in April 2000.

ORGANIZATION CHART



PERSONNEL

Merit System Classification	Number of Employees	Race	Gender
Radiological Health Director	1	1-W	1-M
Radiological Assistant Director	1	1-W	1-M
Radiation Physicist Supervisor	3	3-W	3-M
Radiation Physicist Senior	6	5-W 1-B	5-M 1-F
Radiation Physicist	2	1-W 1-B	1-M 1-F
Radiation Safety Specialist	1	1-W	1-F
Public Health Engineer IV	1	1-W	1-M
Clerk Stenographer IV	1	1-B	1-F
Administrative Support Assistant I	2	2-B	2-F
Total	18	13-W 5-B	12-M 6-F

Legend:

M-male, F-female
W-white, B-black

PERFORMANCE CHARACTERISTICS

Licenses and Registrants by Type per Employee:

Type of License/Registrant	Number per Employee at 9/30/04
General Licensees 539	30
Specific Licensees 437	24
X-ray Machines 8,653	481
X-ray Facility Registrant 3,290	183
Particle Accelerator Registrant 50	3

Number of Inspection/X-Ray Plan Reviews per Year:

Inspection/Plan Review Area	FY 04	FY 03	FY 02	FY 01
X-ray Plan Reviews	207	209	201	188
X-ray Facilities ^(A)	824	945	1,196	1,190
Industrial X-ray Facilities	21	29	10	0
General Licensees Inspected	9	16	1	2
Reciprocity Inspections	6	2	3	2
Radioactive Materials-Medical Licenses	71	75	47	50
Radioactive Materials-Industrial Licenses	52	61	45	72
Radioactive Materials-Particle Accelerator Registrations	11	20	22	9
Radioactive Materials-Other Licenses	12	19	19	20
Totals	1,213	1,369	1,544	1,111

(A) In conjunction with the 824 facilities inspected, there were 1,990 X-ray machines and 2,147 X-ray tubes inspected in the facilities. A facility may have more than one X-ray machine and may have more than one X-ray tube connected to an X-ray machine.

Certifying of Industrial Radiologists

In May 2000, the Office of Radiation Control updated its industrial radiography rules to incorporate new certification requirements. They are addressed in the Chapter 420-3-26 of the Alabama Administrative Code. This rule change was implemented as the result of NRC (Nuclear Regulatory Agency) requirement that all industrial radiographers are to be certified through a radiographer certification program by an approved certifying entity. As a service to the licensees and registrants in Alabama, the Alabama Office of Radiation Control has entered into an Agreement with the Conference of Radiation Control Program Directors, Inc. (CRCPD) and the Texas Bureau of Radiation Control to provide the appropriate examinations and issue the radiographer certification card. The applicant for certification pays the Department of Public Health a fee of \$125. The Department of Public Health pays the Texas Bureau of Radiation Control Program Directors, Inc. a fee of \$50 per examination.

Complaint/Incident Process

Complaints/Incidents	Director of the Office of Radiation Control and the Director of Radioactive Materials (a section of the office) review the initial complaint/incident. Any person in the agency could be assigned to do the follow-up work investigating the complaint/incident
Documentation	Written and verbal complaints/incidents are accepted. The person receiving the incident or complaint report completes a written report. The report is forwarded to the Director of Office of Radiation Control for review. All complaints or incidents are maintained in a hardbound ledger book. This book provides a log number of the complaint/incident, a thumbnail sketch of the complaint/incident, date received and other pertinent information.
If probable cause exists	A report of the investigation, if any, and an explanation of action taken, together with all documentation is filed in the Complaint/Allegation File. When the investigation is complete, the report will indicate if the case is closed. The director of the Office of Radiation Control can then take appropriate action as needed. This could be: a non-compliance letter, written notice of violation, civil penalty, orders to cease and desist, orders for suspension, modification or revocation of license, or suspend the activities of a registrant.

Number of Complaints/Incidents

Fiscal Year	Complaint/Incident	Number Resolved	Average Length of Time to Resolve
2001-02	Complaints 6 Incidents 54	Complaints 6 Incidents 54	1-2 days 1 day
2002-03	Complaints 4 Incidents 40	Complaints 4 Incidents 40	1 week 1 day
2003-04	Complaints 1 Incidents 49	Complaints 1 Incidents 49	1 day to 1 week 1 day

Definitions:

Complaint/Allegation – can include use of faulty equipment, drums of radioactive material shipped without proper labels, bag of house dust found radioactive, someone possibly overexposed to radiation, etc.

Incident – Has included faulty equipment, fire at refinery, radioactive materials detected in scrap metals, radioactive scrap melted at mill, drinking water jug with radioactive label printed on bottle, accidents involving transportation of radioactive materials.

Notification to Licensees of Changes to Administrative Procedures:

The Office of Radiation Control follows the process for adopting and amending administrative rules as prescribed by the Administrative Procedure Act. In addition, the office maintains a list of entities that have requested to be notified of all rule changes. During the rule-adopting process, these entities are notified. Under certain conditions, the licensees affected are notified of rule changes, and their comments are solicited.

Inspection/Enforcement Activities:

If items of non-compliance with laws, rules, or regulations are discovered during an inspection, a letter notifying the licensee/registrant of possible violations is sent. The licensee/registrant has 30 days to effect compliance. If compliance is not effected within 30 days, a letter of actual violations is sent, giving the licensee/registrant 15 days to comply. If compliance is still not effected, the Director of the Office of Radiation Control issues an order requiring compliance. The order may suspend or revoke the license/registration, require other compliance or impose a civil penalty.

Overlap of Jurisdiction:

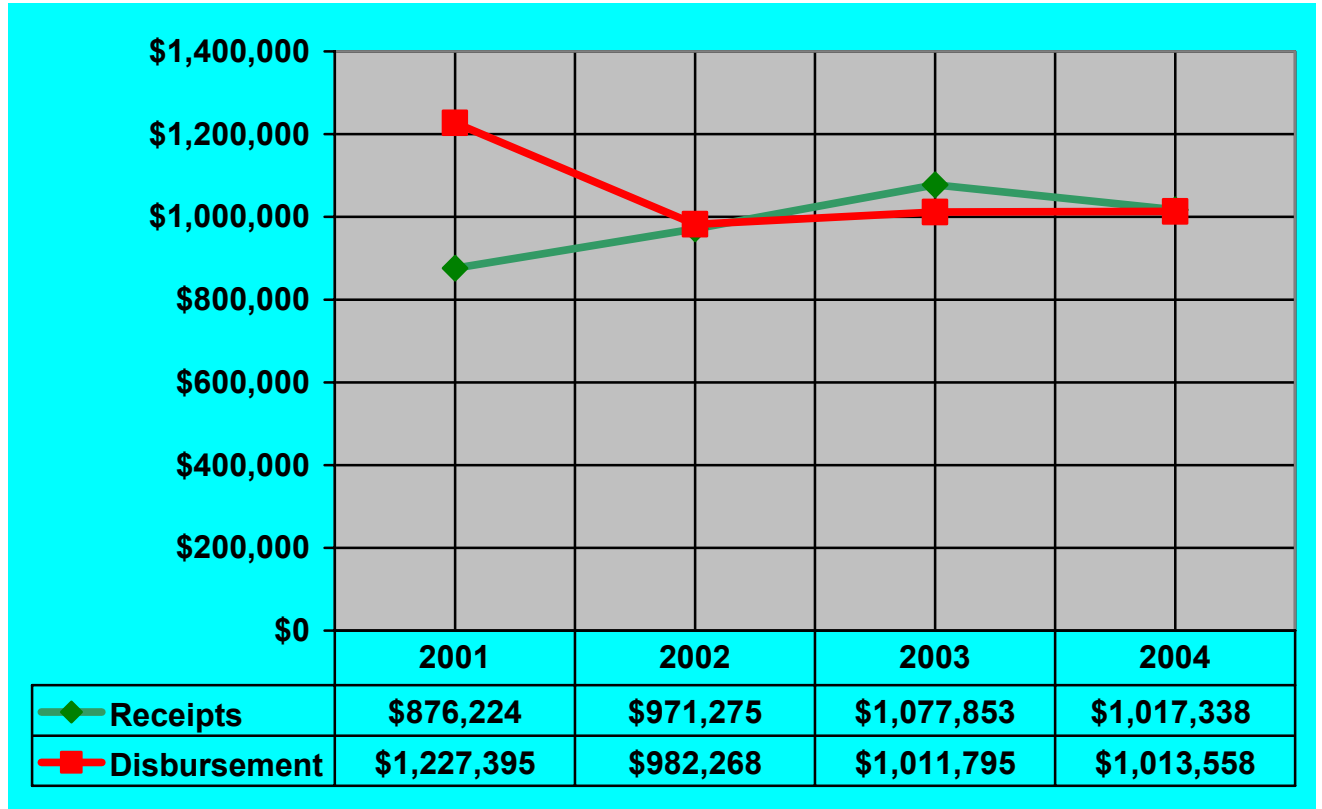
There is no overlap of jurisdiction between the Office of Radiation Control and other regulating entities, such as the Nuclear Regulatory Commission (NRC) and the Food and Drug Administration (FDA), and the Environmental Protection Agency (EPA). By statute and through agreements with the NRC, the Office of Radiation Control regulates and inspects all sources and uses of ionizing radiation not specifically regulated by the NRC. The NRC regulates sources and uses of ionizing radiation at federal installations, such as VA Hospitals, the Red Stone Arsenal, and nuclear power plants within the perimeter of the plant. The Office of Radiation Control is responsible for regulating the effects of ionizing radiation on the environment outside the perimeter of nuclear power plants and all other forms of ionizing radiation, including x-ray facilities and equipment. However, the Office of Radiation Control does not inspect or regulate x-ray facilities or equipment in Jefferson County, as the county has its own x-ray inspection and regulation program which pre-dates the Office of Radiation Control.

FINANCIAL INFORMATION

Schedule of Cash Receipts, Disbursements, and Balances **Radiation Safety Fund**

	<u>2003-04</u>	<u>2002-03</u>	<u>2001-02</u>	<u>2000-01</u>
<u>Receipts:</u>				
Licenses, Permits, and Fees	\$ 1,017,338.25	\$ 1,077,852.72	\$ 971,274.83	\$ 876,224.37
<u>Disbursements:</u>				
Personnel Costs	689,387.56	721,694.67	667,989.07	789,214.52
Employee Benefits	167,594.94	171,061.83	150,668.07	179,381.61
Travel In-State	50,395.98	64,790.84	73,106.22	78,571.38
Travel Out-of-State	5,442.95	7,314.36	21,680.32	9,992.30
Repairs and Maintenance	1,642.11	1,970.90	2,703.16	5,988.36
Rentals and Leases	10,270.02	10,557.96	1,608.91	9,632.73
Utilities and Communications	213.66	771.85	493.22	2,040.80
Professional Services	70,799.74	7,988.90	18,211.50	72,715.36
Supplies, Materials, and Operating Costs	15,264.61	22,833.82	41,710.65	30,511.13
Transportation Equipment Operations	229.40	1,547.27	2,093.84	1,254.96
Grants and Benefits		1,262.99		5,771.38
Other Equipment Purchases	2,317.03		2,002.98	42,320.35
Total	1,013,558.00	1,011,795.39	982,267.94	1,227,394.88
Excess of Receipts Over (Under) Disbursements	3,780.25	66,057.33	(10,993.11)	(351,170.51)
Beginning Cash Balance	71,620.56	5,563.23	16,556.34	367,726.85
Ending Cash Balance	75,400.81	71,620.56	5,563.23	16,556.34
Reserved for Outstanding Obligations	74,739.12	66,057.33	5,167.87	13,446.26
Unobligated Cash Balance	\$ 661.69	\$ 5,563.23	\$ 395.36	\$ 3,110.08

Receipts vs. Operating Disbursements (chart)
Fund 313 – Radiation Safety Fund



QUESTIONNAIRES

Board Members

Questionnaires were not sent to board members. See significant item.

Director

A questionnaire was provided to Kirksey Whatley, the Director of the Office of Radiation Control.

1. Do you believe regulation of sources and uses of ionizing radiation by the state is necessary to protect the health and safety of the public?

Yes – you need only to compare radiation safety in states pre- and post regulations. It is essential.

2. If the state did not regulate the sources and uses of ionizing radiation would the level of regulation provided by the federal government be sufficient to protect the health and safety of the public? Absolutely No!

Federal government does not regulate x-ray or naturally occurring radioactive materials. Only states do.

3. Is there unnecessary duplication of effort in regulating sources and uses of ionizing radiation between the federal and state regulatory programs?

No. State regulations are compatible with existing federal Regulations. Seldom, if ever, do conflicts arise.

4. Are the current statutes, policies and procedures governing sources and uses of ionizing radiation adequate to protect the health and safety of the public? If no, what changes would you make?

Yes, No changes at the present time.

5. Do you think the Office of Radiation Control is adequately funded to accomplish its purpose?

Yes, Funding could be more equitably shared between licensees and registrants.

6. Do you think the Office of Radiation Control is adequately staffed to protect the health and safety of the public?

Yes, our review by NRC reflected this.

7. What are the most significant issues currently facing the Division (Office) of Radiation Control?

- Significant, unanswered, questions regarding our role in the matter of homeland security are out there. If role is significant then staffing & funding became concerns.
- Ability to hire, train, and keep qualified staff is an issue.
- Large number of senior staff are eligible (or will be soon) to retire. Loss of that historical knowledge will impact the program.

Licensees

Questionnaires were sent to a 100 licenses, 72 responded.

1. Do you believe regulation of sources and uses of ionizing radiation by the state is necessary to protect the health and safety of the public?

YES 69 NO 3 NO OPINION

2. Do you think the regulation provided by the federal government would be sufficient to protect public health and safety if the state did not provide regulation of sources?

YES 49 NO 15 NO OPINION 8

3. Do you think the state's requirements unnecessarily restrict the use of ionizing radiation?

YES 1 NO 69 NO OPINION 2

4. Do you think the fees you pay (if any) for licensing and/or registration for the uses of ionizing radiation are fair?

YES 55 NO 10 NO OPINION 7

5. When was your facility last inspected by the Division of Radiation for radiation producing equipment or source of ionizing?

0-6 mo 29 6 mo - 1 yr 30 1-2 Yrs 7 > 2 Yrs 6

6. Have you been satisfied with your dealing with the Division of Radiation Control in its regulation of the uses of ionizing radiation?

YES 65 NO 2 NO OPINION 5

7. Has any member of the Division of Radiation Control required anything other than normal fees, for licensing?

YES 1 NO 71 NO OPINION _____

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APPENDICES

Statutory Authority

CHAPTER 14. RADIATION.

REFERENCES

CROSS REFERENCES

As to compensation for occupational exposure to radiation, see §§ 25-5-190 et seq.

ADMINISTRATIVE CODE

9B Ala. Admin. Code 420-3-26-.01 et seq., Board of Health; Bureau of Environmental and Health Service Standards: Division of Radiation Control.

LIBRARY REFERENCES

Corpus Juris Secundum:

74 C.J.S., Radiation, § 283.

ARTICLE 1. REGULATION OF SOURCES OF IONIZING RADIATION.

§ 22-14-1. Definitions.

respectively ascribed to them by this section:

- (1) By-product material. Any radioactive material, except special nuclear material, yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material.
- (2) Ionizing radiation. Gamma rays and X rays; alpha and beta particles, high-speed electrons, neutrons, protons and other nuclear particles; but not sound or radio waves or visible, infrared or ultraviolet light.
- (3) License -- General and specific:
 - a. *General license.* A license effective, pursuant to regulations promulgated by the State Radiation Control Agency, without the filing of an application, to transfer, acquire, own, possess or use radiation producing machines or quantities of, or devices or equipment utilizing by-product, source, special nuclear materials or other radioactive material occurring naturally or produced artificially.
 - b. *Specific license.* A license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own or possess radiation producing machines or quantities of, or devices or equipment utilizing by-product, source, special nuclear materials or other radioactive material occurring naturally or produced artificially.
- (4) Person. Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof and any legal successor, representative, agent or agency of the foregoing, other than the United States Nuclear Regulatory Commission, or any successor thereto, and other than federal government agencies licensed by the United States Nuclear Regulatory Commission, or any successor thereto.
- (5) Source material.
 - a. Uranium, thorium or any other material which the Governor declares by order to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such; or
 - b. Ores containing one or more of the foregoing materials in such concentration as the

governor declares by order to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material in such concentration to be source material.

(6) Special nuclear material.

a. Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235 and any other material which the Governor declares by order to be special nuclear material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such, but does not include source material; or

b. Any material artificially enriched by any of the foregoing, but does not include source material.

(Acts 1963, No. 582, p. 1269, § 3.)

§ 22-14-2. Declaration of policy.

to protect the public health and safety:

(1) To institute and maintain a regulatory program for sources of ionizing radiation so as to provide for:

a. Compatibility with the standards and regulatory programs of the federal government;

b. A single, effective system of regulation within the state; and

c. A system consonant insofar as possible with those of other states; and

(2) To institute and maintain a program to permit development and utilization of sources of ionizing radiation for peaceful purposes consistent with the health and safety of the public.

(Acts 1963, No. 582, p. 1269, § 1.)

§ 22-14-3. Purpose of article.

22-14-2 by providing for:

(1) A program of effective regulation of sources of ionizing radiation and machines and devices producing ionizing radiation for the protection of the occupational and public health and safety;

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the federal government and the state and to facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to by-product, source and special nuclear materials; and

(4) A program to permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public.

(Acts 1963, No. 582, p. 1269, § 2.)

§ 22-14-4. State Radiation Control Agency; director and powers and duties thereof. [Historical Notes](#)

(a) The State Board of Health is hereby designated as the State Radiation Control Agency, hereinafter referred to as the agency.

(b) The State Health Officer shall be director of the agency, hereinafter referred to as the director, who shall perform the functions vested in the agency pursuant to the provisions of this article.

(c) In accordance with the laws of the state, the agency may employ, compensate and prescribe the powers and duties of such personnel as may be necessary to carry out the provisions of this article.

(d) The agency shall, for the protection of the public health and safety:

(1) Develop and conduct programs for evaluation of hazards associated with use of sources of ionizing radiation;

(2) Develop programs with due regard for compatibility with federal programs for regulation of by-product, source and special nuclear materials;

(3) Formulate, adopt, promulgate and repeal codes, rules and regulations relating to control of sources of ionizing radiation with due regard for compatibility with the regulatory programs of the

federal government;

(4) Issue such orders or modifications thereof as may be necessary in connection with proceedings under Section 22-14-6;

(5) Advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions and with groups concerned with control of sources of ionizing radiation;

(6) Have the authority to accept and administer loans, grants or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(7) Encourage, participate in or conduct studies, investigations, training, research and demonstrations relating to control of sources of ionizing radiation; and

(8) Collect and disseminate information relating to control of sources of ionizing radiation, including:

a. Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations;

b. Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this article and any administrative or judicial action pertaining thereto;

c. Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated, and proceedings thereon; and

d. Maintenance of a file of registrants possessing X-ray machines or other machines and devices producing ionizing radiation.

(Acts 1963, No. 582, p. 1269, § 4.)

HISTORICAL NOTES

HISTORY

Code Commissioner's Notes

Acts 1990, No. 90-109, § 2 provides: "The existence of the State Radiation Control Agency, created and functioning pursuant to section 22-14-4, is hereby continued."

Acts 1994, No. 94-129, § 2, provides "The existence and functioning of the State Radiation Control Agency, created and functioning pursuant to Section 22-14-4 is continued, and that code section is expressly preserved."

Act 98-142, § 2 provides: "The existence and functioning of the State Radiation Control Agency, created and functioning pursuant to Sections 22-14-1 to 22-14-35, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 2002-82, § 2, provides: "The existence and functioning of the State Radiation Control Agency, created and functioning pursuant to Sections 22-14-1 to 22-14-35, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

§ 22-14-5. Radiation Advisory Board of Health. [Historical Notes](#)

(a) There shall be established a Radiation Advisory Board of Health consisting of 10 members appointed by the Governor. The Governor shall appoint one member to the Radiation Advisory Board from a list of three nominees in each of the following fields:

(1) Radiology.

(2) Medicine.

(3) Radiation or health physics.

(4) Applied sciences. These nominees are to be submitted to the Governor by the State Committee of Public Health.

One member of the Radiation Advisory Board shall be appointed from a list of three nominees submitted to the Governor by the Business Council of Alabama, or its successor. One member of the Radiation Advisory Board shall be appointed from the University of Alabama from a list of three nominees having knowledge in the field of radiation submitted by the President of the University of

Alabama. One member of the Radiation Advisory Board shall be appointed from Auburn University from a list of three nominees having knowledge in the field of radiation submitted by the President of Auburn University. One member of the Radiation Advisory Board shall be appointed from a list of three nominees submitted to the Governor by the President of the Alabama Dental Association. One member of the Radiation Advisory Board shall be appointed from a list of three nominees submitted to the Governor by the Alabama Board of Chiropractic Examiners. One member of the Radiation Advisory Board shall be appointed from a list of three nominees submitted to the Governor by the Alabama Veterinary Medical Association for an initial term of four years and thereafter the term shall be six years. Members of the board shall serve for terms of six years each, except that of the first board appointed, three members shall serve for two years, three members shall serve for four years and three members shall serve for six years, as the Governor may prescribe. The members shall receive no salary for services but may be reimbursed for expenses incurred in connection with attendance at board meetings or for authorized business of the board pursuant to Article 2 of Chapter 7 of Title 36. The State Health Officer shall serve as chairman of the board, and the board shall meet at his or her request.

(b) The board shall:

(1) Review and evaluate policies and programs of the state relating to ionizing radiation and advise the agency of its opinions and findings.

(2) Advise the State Radiation Control Agency on any matter submitted to said advisory board by said agency and to propose, oppose, recommend, or disapprove in an advisory capacity any matter that may come before the agency.

(Acts 1963, No. 582, p. 1269, § 5; Acts 1993, 1st Ex. Sess., No. 93-913, p. 212, § 1; Act 2002-82, p. 259, § 3.)

HISTORICAL NOTES

HISTORY

Amendment notes:

The 1993, 1st Ex. Sess., amendment, effective August 31, 1993, in subsection (a), substituted "10 members" for "nine members" in the first sentence of the introductory paragraph and added the present sixth sentence in the last paragraph.

The 2002 amendment, effective February 22, 2002, in the undesignated paragraph substituted "Business Council of Alabama, or its successor" for "Associated Industries of Alabama", substituted "President" for "president" in three places and inserted "or her"; and in subsection (b), in subdivision (1) substituted a period for "; and".

§ 22-14-6. Licensing or registration of persons dealing with radioactive materials.

shall provide, by rule or regulation, for general or specific licensing of persons to receive, possess or transfer by-product, source, special nuclear materials, devices or equipment utilizing such materials or any other radioactive materials occurring naturally or produced artificially. Such rule or regulation shall provide for amendment, suspension or revocation of licenses.

(b) The agency is authorized to require registration and inspection of persons dealing with ionizing radiation which does not require a specific license and may require compliance with specific safety standards to be promulgated by the agency.

(c) The agency is authorized to exempt certain sources of ionizing radiation or kinds of uses or users from the licensing or registration requirements set forth in this section when the agency makes a finding that the exemption of such sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(d) Any report of investigation or inspection or any information concerning trade secrets or secret industrial processes obtained under this article shall not be disclosed or opened to public inspection by the agency.

(e) Rules and regulations promulgated pursuant to this chapter may provide for recognition of other state or federal licenses as the agency may deem desirable, subject to such registration requirements as the agency may prescribe.

(f) It shall be unlawful for any person to use, manufacture, produce, knowingly transport, transfer, receive, acquire, own or possess any source of ionizing radiation unless licensed by or registered with the agency in accordance with the provisions of this article and the rules and regulations issued thereunder. (Acts 1963, No. 582, p. 1269, §§ 6, 14.)

§ 22-14-7. Right of entry and inspection.

power to enter, at all reasonable times, upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this article, and rules and regulations issued thereunder, and the owner, occupant or person in charge of such property shall permit such entry and inspection, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the Federal Government or its duly designated representative. (Acts 1963, No. 582, p. 1269, § 7.)

§ 22-14-8. Records and reports.

a source of ionizing radiation to maintain records relating to its receipt, storage, transfer or disposal and such other records as the agency may require, subject to exemptions as may be provided by rules or regulations.

(b) The agency shall require each person who possesses or uses a source of ionizing radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules and regulations of the agency. Copies of these records and those required to be kept by subsection (a) of this section shall be submitted to the agency on request.

(c) The agency shall adopt reasonable regulations, compatible with those of the United States Nuclear Regulatory Commission, or any successor thereto, pertaining to reports of exposure of personnel. Such regulations shall require that reports of excess exposure be made to the individual exposed and to the agency and shall make provision for periodic and terminal reports to individuals for whom personnel monitoring is required.

(d) The provisions of this article shall not be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

(Acts 1963, No. 582, p. 1269, § 8.)

§ 22-14-9. Agreements with federal government; effect thereof on federal license.

on behalf of this state, is authorized to enter into agreements with the Federal Government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state.

(b) Any person who, on the effective date of an agreement under subsection (a) above, possesses a license issued by the Federal Government shall be deemed to possess the same pursuant to a license issued under this article, which shall expire either 90 days after receipt from the agency of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

(Acts 1963, No. 582, p. 1269, § 9.)

§ 22-14-10. Cooperative agreements for inspections, etc.; training programs.

authorized to enter into an agreement or agreements with the Federal Government, other states or interstate agencies whereby this state will perform, on a cooperative basis with the federal government, other states or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(b) The agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter and may make said personnel available for participation in any program or programs of the Federal Government, other states or interstate agencies in furtherance of the purposes of this article.

(Acts 1963, No. 582, p. 1269, § 10.)

§ 22-14-11. Administrative action and judicial review. [Annotations](#)

(a) In any proceeding under this article:

(1) For the issuance or modification of rules and regulations relating to control or sources of ionizing radiation;

(2) For granting, suspending, revoking or amending any license; or

(3) For determining compliance with rules and regulations of the agency, the agency shall afford an opportunity for a hearing on the record upon the request of any person whose interest may be affected by the proceeding and shall admit any such person as a party to such proceeding.

(b) Whenever the agency finds that an emergency exists requiring immediate action to protect the public health and safety, the agency may, without notice or hearing, issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provision of this article, such regulation or order shall be effective immediately. Any person to whom such regulation or order is directed shall comply therewith immediately, but on application to the agency shall be afforded a hearing within 30 days. On the basis of such hearing, the emergency regulation or order shall be continued, modified or revoked within 30 days after such hearing.

(c) Any final order entered in any proceeding under subsections (a) and (b) of this section shall be subject to judicial review by the Circuit Court of Montgomery County in the manner prescribed for taking appeals from orders of the Alabama Public Service Commission as provided in Division 3 of Article 2 of Chapter 1 of Title 37 of this Code.

(Acts 1963, No. 582, p. 1269, § 12.)

ANNOTATIONS

CASENOTES

1. In general

Limited efficacy of injunction. Once statutory goal of injunction under this section and § 22-14-12 has been met, the injunction should be dissolved, thus, injunction successfully sought to provide guarantee of financial support for contaminated site cleanup should not remain in effect after decontamination is complete. *Petroleum Equipment Tool Co. v. State Bd. of Health*, 575 So.2d 587 (Ala.Civ.App.1991).

§ 22-14-12. Orders enjoining or directing compliance. [Annotations](#)

Whenever, in the judgment of the agency, any person has engaged in, or is about to engage in, any acts or practices which constitute, or will constitute, a violation of any provision of this article, or any rule, regulation or order issued thereunder, and at the request of the agency, the Attorney General, or the district attorney under his direction, may make application to the circuit court for an order enjoining such acts or practices or for an order directing compliance, and upon a showing by the agency that such person has engaged, or is about to engage, in any such acts or practices, a permanent or preliminary injunction, temporary restraining order or other order may be granted.

(Acts 1963, No. 582, p. 1269, § 13.)

ANNOTATIONS

CASENOTES

1. In general

Limited efficacy of injunction. Once statutory goal of injunction under § 22-14-11 and this section has been met, the injunction should be dissolved, thus, injunction successfully sought to provide guarantee of financial support for contaminated site cleanup should not remain in effect after decontamination is complete. *Petroleum Equipment Tool Co. v. State Bd. of Health*, 575 So.2d 587 (Ala.Civ.App.1991).

Cited in *Petroleum Equipment Tool Co. v. State Bd. of Health*, 567 So.2d 328, 111 O.G.R. 444

(Ala.Civ.App.1990), reh'g overruled (Ala. Civ. App.) and later proceeding, 575 So.2d 587(Ala. Civ. App.).

§ 22-14-13. Impounding of ionizing radiation sources.

of an emergency to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe, or fails to observe, the provisions of this article, or any rules and regulations issued thereunder.

(Acts 1963, No. 582, p. 1269, § 15.)

§ 22-14-14. Penalty for violation of article or rules, regulations or orders; notice of possible liability for civil penalty; civil action by Attorney General; considerations affecting amount of civil penalty; maximum penalty on small businesses; payment of penalty.

of the provisions of this article or rules, regulations or orders of the agency in effect pursuant thereto shall, upon conviction thereof, be punished by a fine not exceeding \$1,000.00, or by imprisonment in the county jail or by a sentence to hard labor for the county not exceeding 12 months, or by both fine and imprisonment or hard labor.

(b) Any person who

(1) Violates any licensing provision of Section 22-14-4 or Section 22-14-6 or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or

(2) Commits any violation for which a license may be revoked under Section 22-14-11, shall be subject to a civil penalty to be imposed by the state radiation control agency not to exceed \$10,000.00 for each such violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The State Radiation Control Agency shall have the power to compromise, mitigate, or remit such penalties.

(c) Whenever the State Radiation Control Agency has reason to believe that a person has become subject to the imposition of a civil penalty under the provisions of this section, it shall notify such person in writing:

(1) Setting forth the date(s), facts, and nature of each act or omission with which the person is charged,

(2) Specifically identifying the particular provision or provisions of the section, rule, or regulation, order, or license involved in the violation, and

(3) Advising of each penalty which the State Radiation Control Agency proposes to impose and its amount.

Such written notice shall be sent by registered mail by the State Radiation Control Agency to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within a reasonable period as the State Radiation Control Agency shall by regulation provide, why such penalty should not be imposed. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the State Radiation Control Agency, if any, the penalty may be collected by civil action.

(d) Upon the request of the director of the State Radiation Control Agency, the Attorney General is authorized to institute a civil action to collect a civil penalty imposed pursuant to this section. The Attorney General shall have the power to compromise, mitigate, or remit such civil penalties as are referred to him for collection.

(e) In determining the amount of civil penalty, the State Radiation Control Agency shall issue rules, regulations, or orders which consider:

(1) The class or types of licenses or vendors,

(2) The economic effect on the person,

(3) The severity of the violation,

(4) The compliance history of the person, and

(5) The person's responsiveness with corrective actions.

In addition to the above, for those persons who qualify as a small business pursuant to the laws relating to small business administration loans and nonprofit institutions, the maximum civil penalty stated in subsection (b) above shall be \$1,000.00.

(f) All civil penalties, less any costs to the Attorney General's Office, shall be paid into the general

fund.

(Acts 1963, No. 582, p. 1269, § 16; Acts 1988, No. 88-535, p. 817, § 1.)

§ 22-14-15. Effect of article on local ordinances.

in effect, of the governing body of a municipality or county or board of health relating to by-product, source, special nuclear materials, other radioactive materials occurring naturally or produced artificially or machine-produced radiation, shall not be superseded by this article if such ordinances or regulations are, and continue to be, consistent with the provisions of this article, amendments thereto and rules and regulations thereunder; but the authority of the agency under this article shall be paramount to that of any county, city or town.

(Acts 1963, No. 582, p. 1269, § 11.)

§ 22-14-16. Non-consent of state to acquisition of land by federal government for disposal of nuclear waste. [References](#)

Notwithstanding any law, order or regulation to the contrary, the State of Alabama does not consent to the acquisition by any agency, department or instrumentality of the United States of America by purchase, condemnation or otherwise of any land, building or other site within the State of Alabama for use of storing, depositing or dumping any nuclear spent fuel or any other radioactive material or waste, except for that nuclear spent fuel or radioactive material or waste that is generated or used in Alabama.

(Acts 1979, No. 79-105, p. 126; Acts 1981, No. 81-702, p. 1179.)

REFERENCES

CROSS REFERENCES

As to the Southern Interstate Nuclear Compact, see § 9-18-1.

ARTICLE 1A. REGULATION AND CERTIFICATION OF VOLUME REDUCTION OF LOW-LEVEL RADIOACTIVE WASTES.

§ 22-14-20. Adoption of rules requiring generators of low-level radioactive waste to implement best management practices as condition of access to disposal facilities.

shall develop and adopt rules which require generator of low-level radioactive waste to implement best management practices, including prevention, minimization, reduction, segregation, and hold-for-decay storage, as a condition of access to a low-level radioactive waste disposal facility licensed by the State Radiation Control Agency or by the appropriate authority of a state which has compacted with Alabama to dispose of low-level radioactive waste generated in Alabama.

(Acts 1988, No. 88-535, p. 817, § 2(a).)

§ 22-14-21. Certification to another state or facility of compliance by facility with rules adopted under § 22-14-20.

facility, if requested by that state or facility, that a facility either does or does not comply with the rules issued pursuant to Section 22-14-20 based upon data, reports, and/or other information available to the agency.

(Acts 1988, No. 88-535, p. 817, § 2(b).)

§ 22-14-22. Certification of facilities licensed only by federal government; request for inspection; inspection fee; failure to pay fee.

facilities licensed only by the federal government if it has sufficient data, reports, and/or other information to determine whether such a facility is complying with the rule specified in Section 22-14-20. Such facility may request the inspection by the staff of the State Radiation Control Agency of those activities related to the volume reduction of low-level radioactive waste. Such a facility shall pay a fee equal to 75 percent of the appropriate United States Nuclear Regulatory Commission's average cost per professional staff hour based upon the professional staff time spent in determining that a facility does or does not comply with the criteria adopted pursuant to Section 22-14-20. Failure to pay such inspection fee shall permit the State Radiation Control Agency to revoke or rescind any certifications issued. All such fees are to be paid into the Radiation Safety Fund.

(Acts 1988, No. 88-535, p. 817, § 2(c).)

ARTICLE 2. EMPLOYEE BACKGROUND INVESTIGATIONS.

REFERENCES

CROSS REFERENCES

As to the criminal justice information center commission, see §§ 41-9-590 through 41-9-648.

§ 22-14-30. Inquiry into employee's criminal history by licensed nuclear facilities; "vital areas" defined. [References](#)

Any person, firm or corporation which operates, constructs or maintains a nuclear powered electric generating facility within the state licensed by the United States Nuclear Regulatory Commission, except an agency of the United States Government, shall conduct an inquiry into the criminal history record of any person employed or who has made application for employment at such facility.

The criminal history record inquiry shall be used to establish the suitability of such person to work within or have access to any vital area of such facility. "Vital areas" shall be defined by the United States Nuclear Regulatory Commission or any other federal agency having authority to license or regulate nuclear powered electric generating facilities.

(Acts 1979, No. 79-805, p. 1483, § 1.)

REFERENCES

RESEARCH REFERENCES

Forms

Statutory References, Am. Jur. Pl. & Pr. Forms Atomic Energy § 2.

§ 22-14-31. Fingerprints; search of criminal records by department; fees.

corporation referred to in Section 22-14-30 shall submit to the Alabama Department of Public Safety two sets of classifiable fingerprints of each person for whom a criminal history record inquiry is required. Fingerprints shall be submitted upon cards of such type as the department may require.

The department shall search its criminal history files or the criminal history files of any other state agency to which it has access and return the results of its records search to the submitting employer. The director shall set and collect a reasonable fee for such service. Said fee shall be paid into the Department of Public Safety Operating Fund.

(Acts 1979, No. 79-805, p. 1483, § 2.)

§ 22-14-32. Submission of fingerprint cards to F.B.I.

set of the classifiable fingerprint cards of such employee to the identification division of the Federal Bureau of Investigation with a request that the bureau search its criminal history files to ascertain if such employee has a criminal history and furnish any identifiable information on such employee to the department.
(Acts 1979, No. 79-805, p. 1483, § 3.)

§ 22-14-33. Liability of department.

for any action taken against any person by such employers as a result of receiving or using such criminal history records obtained from the department.
(Acts 1979, No. 79-805, p. 1483, § 4.)

§ 22-14-34. Equivalent background investigations sufficient.

powered electric generating facility which requires clearance or background investigation equivalent to the requirements set forth herein shall be exempt from the provisions of this article.
(Acts 1979, No. 79-805, p. 1483, § 5.)

§ 22-14-35. Costs of implementing article.

person, firm or corporation which operates, constructs or maintains a nuclear powered electric generating facility within the state licensed by the United States Nuclear Regulatory Commission on whose behalf these inquiries are made.
(Acts 1979, No. 79-805, p. 1483, § 6.)

Board Members



STATE OF ALABAMA DEPARTMENT OF
PUBLIC HEALTH

Donald E. Williamson, MD
State Health Officer

July 15, 2005

Anthony Lindsey
Examiners of Public Accounts
Gordon Persons Building
50 North Ripley Street
Montgomery, Alabama 36104

Dear Mr. Lindsey:

Attached is a list of the current membership of the Radiation Advisory Board of Health. The "term of office", as indicated on the list, represents the date of expiration of the appointment. As in the past, members have continued to serve beyond the expiration date of their terms until reappointed or replaced.

As stated, and indicated on the list, letters of recommendation for filling expired terms have been submitted to the Governor's Office for consideration.

I assume that the "bill" that you referred to having been submitted in 2002 was the bill to charge fees for services performed by the Office of Radiation Control. The proposed bill was submitted to the Legislative Reference Service (LRS) for consideration. I am not aware that the bill was ever assigned a "number" for consideration. Attached is a copy of the draft bill as given to management for submission to LRS.

Please contact me if this response does not adequately address your concerns and requests.

Sincerely,

Kirksey E. Whatley
Kirksey E. Whatley, Director
Office of Radiation Control

RADIATION ADVISORY BOARD OF HEALTH
(Updated through May 1, 2005)

<u>Name and Address</u>	<u>Position on Board</u>	<u>Term of Office</u>
Donald E. Williamson, M.D. State Health Officer The RSA Tower, Suite 1500 201 Monroe Street P.O. Box 303017 Montgomery, Alabama	Chairman	
Anna Clayton-Smith Oncology Department Southeast Alabama Regional Medical Center U.S. Highway 84, East Dothan, Alabama 36301	Field of Health Physics (Nominations submitted)	September 30, 2002
John Morrow, M.D. Radiology Department Northeast Alabama Regional Medical Center P.O. Box 2208 Anniston, Alabama 36207	Field of Radiology (Nominations submitted)	September 30, 2002
William Helvie, M.D. 4143 Carmichael Road Montgomery, Alabama 36106	Field of Medicine (Nominations submitted)	September 30, 2002
Dr. Hugh Holloway 109 Sandy Springs Road Dothan, Alabama 36301	Field of Applied Science (Nominations submitted)	July 10, 1998
Hal T. Barrett 5623 Union Chapel Terrace Northport, Alabama 35476	Field of Radiation at The University of Alabama (Nominations submitted)	July 10, 2004
Dr. William R. Brawner, Jr. Department of Radiology College of Veterinary Medicine Auburn University, Alabama 36849	Field of Radiation at Auburn University (Nominations submitted)	September 30, 2002
Dr. David Greer 924 Linwood Road Birmingham, Alabama 35222	Alabama Dental Association (Advised of vacancy)	July 10, 2000
Peter DeFranco, D.C. 3166 Allison Bonnett Memorial Dr. Hueytown, Alabama 35023	Alabama Board of Chiropractic Examiners	September 30, 2008
Dr. Michael Bailey 1300 Saxon Court Montgomery, Alabama 36117	Alabama Veterinary Medical Association	September 30, 2007